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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000121A-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BELLSOUTH TRACK)

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BEFORE: CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 7

DATE: Tuesday, February 3, 2004

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

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## PARTICIPANTS:

ALBERT BELL, AT&T Communications of the Southern States.

TRACY HATCH, Messer, Caparello & Self, on behalf of AT&T Communications of the Southern States.

DONNA McNULTY, MCI Communications.

NANCY WHITE and AL VARNER, BellSouth Telecommunications.

SALLY SIMMONS, FPSC Staff.

## STAFF RECOMMENDATION

ISSUE 1: How should BellSouth's voluntary Self-Executing Enforcement Mechanism (SEEM) be modified to incorporate the severity of a performance measure failure?

RECOMMENDATION: BellSouth should be required to modify the SEEM plan for Tier 1 and Tier 2 to incorporate the severity of a performance measure failure in the manner recommended in the analysis portion of staff's January 22, 2004 memorandum. BellSouth's modified SEEM plan should be submitted within 60 days from the date of the order from staff's recommendation.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, the resulting order will be issued as proposed agency action. The order will become final upon issuance of a consummating order if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the order. Staff recommends that this docket should remain open thereafter to address approval of BellSouth's modified SEEM plan in response to Issue 1 and to conduct periodic reviews of the performance assessment plan.

## PROCEEDINGS

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CHAIRMAN BAEZ: We are on Item 7.

MS. SIMMONS: Commissioners, Item 7 provides a revised version of a recommendation previously filed on August 7th of 2003. That recommendation was deferred at the request of the parties to enable further evaluation. The recommendation before you today is conceptually similar to the earlier one, although there are some differences.

Just by way of background, the issue at hand is how BellSouth's voluntary self-executing enforcement mechanism should be modified to incorporate the severity of a performance measure failure in setting the size of a remedy payment.

Currently remedy payments vary according to domain, for instance, according to whether it's preordering, ordering, provisioning, maintenance, repair, or billing. And they also vary in part according to the duration of a performance measure failure.

Staff's basic concept in this recommendation is to differentiate payments further based on changes in disparity and CLEC volume over time as compared to present.

Staff has held numerous conference calls with

1 the parties since last August to identify both  
2 theoretical and empirical issues and to try to come  
3 up with possible solutions. I want to emphasize  
4 that from staff's perspective, we are trying to  
5 balance the interests of the parties. It's a very  
6 difficult balancing act, but that's what we're  
7 striving to do.

8 I also wanted introduce a relatively new member  
9 of my staff, Kit Kennedy, who is assisting me on  
10 this. And she has been with us since last fall, so  
11 I wanted to introduce her.

12 I know we have a number of parties here to  
13 speak, and we can proceed as you wish.

14 CHAIRMAN BAEZ: All right. Let's hear from the  
15 parties. Ms. White.

16 MS. WHITE: Yes. Nancy White for BellSouth  
17 Telecommunications. With me is Al Varner of  
18 BellSouth Telecommunications, and Mr. Varner will be  
19 doing the talking for BellSouth.

20 CHAIRMAN BAEZ: Mr. Varner.

21 MR. VARNER: Good morning.

22 CHAIRMAN BAEZ: Good morning. Go ahead.

23 MR. VARNER: Oh, okay.

24 CHAIRMAN BAEZ: Go ahead.

25 MR. VARNER: As Ms. Simmons said, there has

1           been an awful lot of work that has gone into this,  
2           and the bulk of the work that has gone into it has  
3           been centered around how to make this concept  
4           workable. The problem as we see it, though, is that  
5           the concept is flawed. So what we've done is, we've  
6           spent an awful lot of time centered around trying to  
7           make a concept that doesn't really work very well  
8           work.

9           What we have now is a situation wherein a staff  
10          recommendation produces penalty amounts that are  
11          wildly unpredictable, and it's particularly  
12          noticeable the closer that we get to perfect  
13          performance. And it produces huge penalties that  
14          bear no relation to the harm caused in some cases.

15          And to illustrate that, I have a couple of  
16          examples I wanted to hand out.

17          (Document distributed.)

18          MR. VARNER: Okay. What I wanted to do first  
19          is just kind of walk through what it is I've just  
20          handed out. The first page is an example taking the  
21          staff's proposed rec, and we just pulled out a  
22          situation wherein a penalty resulted. And let me  
23          walk through what this was.

24          This particular example on the first page is a  
25          situation wherein we're talking about the

1 measurement missed installation appointment. We  
2 said we were going to be there at a certain time,  
3 and we didn't show up when we were supposed to.

4 The way the recommendation works, you establish  
5 a baseline, and what you see in the baseline is that  
6 we made 99.6% of the appointments for the CLECs and  
7 99.9% of them for retail customers, which there's  
8 very little difference.

9 You fast forward to a current month, and we had  
10 a situation where we made 88.9% for the CLECs and  
11 99.9% for retail. That 88.9% was one missed  
12 appointment. They only had eight orders that month.  
13 We missed one of them.

14 As a result of that, in month 1, for this one  
15 missed appointment, we would have paid \$20,000. If  
16 it had been month 6, you would triple that to  
17 \$60,000.

18 Now, to really illustrate what happens when you  
19 get near perfect performance, turn to the second  
20 page. Here's a situation wherein on the  
21 installation appointments, during the baseline  
22 period we made 99.8% of all our appointments for the  
23 CLECs, or 99.8209, and 99.8210 for retail.

24 If you fast forward to the current month that  
25 we're now looking at to establish the penalty, we

1           made 99.96 for the CLECs. We actually got better.  
2           But we made 99.99 for us. The penalty in that  
3           situation under this recommendation in the first  
4           month is \$31,716,163 for missing one appointment.  
5           If this has been month 6, it would have been \$95  
6           million for missing one appointment for one CLEC.

7                     This is the problem that we've been  
8           illustrating and the problem that we've been talking  
9           about. The thing that creates this problem is a  
10          basic flaw in the design of the approach. We've  
11          spent a lot of time trying to make this workable.

12                    One of the features that was in the  
13          recommendation in August that recognizes the  
14          potential for this to occur was that there was an  
15          arbitrary maximum imposed that said you would not  
16          pay more than \$25,000. That feature was removed in  
17          the current recommendation. But all that feature  
18          does is, it's like putting a Band-Aid on a severed  
19          artery. You still at its core have a plan that is  
20          basically flawed in its concept. That just keeps it  
21          from spiraling out of control.

22                    Unfortunately, the approach that we're using is  
23          just unnecessarily complex. Here's what we think.  
24          We believe that if we're required to make -- to  
25          process 95 out of 100 CLEC orders correctly, and we

1           only do 90, we ought to pay for the five that we've  
2           missed below the standard. It's simple. We know  
3           what to do. We can direct our forces, tell them  
4           what to do, and we end up with a penalty that's  
5           somewhat commensurate with the harm that's done.

6           I could go through a description of what -- the  
7           process that we have on the recommendation, but I'll  
8           just try it for a minute. First, what we would have  
9           to do under the recommendation is to establish a  
10          baseline penalty level equal to the average of the  
11          relative proportion of success times the cube root  
12          of CLEC volume for the previous 12 months. Then you  
13          would calculate the ratio of the relative level of  
14          success in the current month times the cube root of  
15          the 100 orders in the above example, and the penalty  
16          would be the result of dividing the above current  
17          month's ratio by the 12-month ratio times the  
18          current fee schedule. Now --

19                 COMMISSIONER DEASON: That sure sounds simple.

20                 MR. VARNER: Yeah, as opposed to pay me on the  
21          five orders you missed, which is what we've been  
22          proposing to do.

23                 The other problem with that is we have no way  
24          to tell our people what to do. The example I gave  
25          you was a situation where performance actually got



1 better for us and the CLEC, and the penalty was  
2 still \$31 million. We have to go out and tell our  
3 people in some cases that if performance actually  
4 gets better, the penalties may go up instead of  
5 going down. There's no way to manage this, if in  
6 fact we are deficient, to tell our people what to do  
7 in order to not be deficient.

8 So what we would propose is this: That if in  
9 fact you're going to adopt this as some sort of an  
10 interim measure, that at least the cap has to apply.

11 The other thing is that when staff proposed  
12 that -- one of the changes that was made between  
13 August and now was an attempt to deal with something  
14 called dollar neutrality. It's a view or an  
15 approach that says that the penalties in Florida are  
16 about right today, so we just want to vary around  
17 that number.

18 The problem is that as designed, it doesn't do  
19 that. It has the potential for spiraling way out of  
20 control.

21 The other issue is that it doesn't achieve that  
22 objective anyway, if in fact you're saying that  
23 performance today, if it continues at today's level,  
24 should produce about today's penalties.

25 COMMISSIONER DAVIDSON: Chairman, at this point

1 I have a question for staff. As you're going  
2 through this, I would like to know -- in example 2,  
3 I mean, is it staff's intent that one missed repair  
4 appointment would generate a penalty of \$31 million?

5 MS. SIMMONS: I think this example is probably  
6 an extreme situation.

7 COMMISSIONER DAVIDSON: Well, just answer the  
8 question. Is that staff's intent, that using the  
9 parameters of this example, that one missed repair  
10 appointment would generate a penalty of \$31 million?

11 MS. SIMMONS: It's difficult for me to answer  
12 the question on the spot, because I've only seen  
13 this a couple of minutes ago. But I -- so I haven't  
14 really had an opportunity to go through the math.  
15 But I would agree in this instance, it would appear  
16 that the result is perhaps not that logical, but I  
17 have not had an opportunity to really go through it.

18 COMMISSIONER DAVIDSON: Thanks.

19 CHAIRMAN BAEZ: Go ahead, Mr. Varner.

20 MR. VARNER: All right. So as we proceed --  
21 well, first, we would have to reinstate the \$25,000  
22 maximum even if we kept -- if you went with the plan  
23 that was in in August or you went with this one, and  
24 you would have to reduce the fee schedule by about  
25 10% to get to the dollar neutrality objective.

1           Anything that we do today, though, we believe  
2           has to be accompanied by initiating a six-month  
3           review. At the time that the orders that initiated  
4           these plans were put in place, there was a provision  
5           put in for a six-month review of the same plan.  
6           Actually, what we've been going through for about --  
7           during this has been under the auspices of that.

8           As we gone through it, though, however, I  
9           believe there has been some reticence or some  
10          constraint felt because of the fact that we were  
11          trying to have to deal with the basic plan as we  
12          have it today.

13          What we would propose to do is to initiate a  
14          six-month review that would allow us to deal with  
15          the basic structure of the plan.

16          The problem that's creating this is trying to  
17          take the plan that we have now and reduce severity  
18          in some form on top of it, and in doing that, it  
19          creates these situations where things spiral out of  
20          control.

21          If we're allowed to go in and actually address  
22          the basic structure of the plan, then I believe we  
23          can come up with a plan that accomplishes the  
24          objectives that staff and the Commission were trying  
25          to get without having these unintended consequences

1 that go along with it, and a lot simpler than what  
2 you're looking at today.

3 CHAIRMAN BAEZ: Thank you, Mr. Varner.

4 Mr. Hatch.

5 MR. HATCH: Thank you, Commissioners. I'll  
6 make a few brief comments, and then I have some  
7 folks here that can answer any of the technical  
8 questions.

9 In general, AT&T supports the staff's  
10 recommendation. This has been a give-and-take  
11 process. Neither BellSouth nor AT&T got everything  
12 that they wanted. It has truly been a splitting of  
13 the baby. Everybody got something, and everybody  
14 took something out of this whole process. And so  
15 where we are today with the staff's recommendation,  
16 I think we support it.

17 I think that it's appropriate that you would  
18 endorse the staff's recommendation and move this  
19 process forward. As Mr. Varner mentioned, there is  
20 a six-month review process. We would like to see  
21 this process put in place and just see how it  
22 works.

23 You've seen some parade of horrors, examples  
24 from Mr. Varner that nobody has had the time to see  
25 or check to see where or how these things were put

1 together, where the data comes from, or how it's  
2 being manipulated. We're at something of a  
3 disadvantage in responding to that, obviously, but  
4 certainly it's designed for maximum impact.

5 I think further if there's any technical, then  
6 I'll let my technical folks address Mr. Varner's  
7 technical points.

8 MR. BELL: Yes. I think that one of the things  
9 the Commission needs to be -- my name is Albert  
10 Bell. I'm a statistician with AT&T. Excuse me,  
11 Commissioners.

12 One of the things that you need to be aware of  
13 is that in trying to address the concern that  
14 Mr. Varner raised is that any changes, any changes  
15 to the current staff recommendation need to be  
16 looked at carefully, because they could have other  
17 consequences beyond the ones of fixing a problem  
18 that may or may not be likely to occur in the  
19 future, and so certainly a six-month review would  
20 allow us to look into that.

21 In particular, Mr. Varner mentioned a cap of  
22 \$25,000. There was also in the previous  
23 recommendation a floor of \$500 as a minimum for any  
24 violations that were found. And certainly if the  
25 Commission wants to modify this and bring in the

1 cap, it would -- at a minimum, they should put in  
2 the floor as well.

3 CHAIRMAN BAEZ: I'm sorry, Mr. Bell. Really  
4 quickly, is there some sort of agreement with a cap  
5 and a floor, not as a permanent condition, but as an  
6 interim situation until we can get a six-month  
7 review finished?

8 MR. BELL: Well, I think -- I said that --  
9 suggested that as a minimum, because even doing so,  
10 there might be impacts on the dollar neutrality goal  
11 that the staff has articulated. If it's done in a  
12 -- the dollar neutrality is incorporated by way of  
13 -- assuming that there is no cap or floor, if one  
14 puts those in after the fact, the dollar neutrality  
15 would perhaps be --

16 CHAIRMAN BAEZ: Compromised?

17 MR. BELL: Compromised, that's correct.

18 And, you know, as we pointed out previously,  
19 there has been quite a bit of give-and-take on the  
20 potential problems and trying to find solutions that  
21 have gone into getting to this point. And in  
22 particular, Mr. Varner mentioned at one point a  
23 concern about things spiraling out of control in the  
24 future, and one of the staff -- one of the  
25 recommendations of staff went particularly to that

1 issue by modifying the impact of volume on both  
2 current and future payments so as to address that  
3 concern of BellSouth.

4 CHAIRMAN BAEZ: Thank you, Mr. Bell.

5 Ms. McNulty.

6 MS. McNULTY: Good afternoon, Commissioners.

7 I'm Donna McNulty representing MCI.

8 MCI also agrees with the staff recommendation  
9 and also agrees with all of the comments made by  
10 AT&T and would support a six-month review process as  
11 well.

12 Thank you.

13 CHAIRMAN BAEZ: Thank you, Ms. McNulty.

14 Commissioners, questions?

15 COMMISSIONER DAVIDSON: A couple of questions,  
16 Chairman, thank you, for staff.

17 Has staff's model, this specific model, been  
18 adopted by other utility commissions across the  
19 country?

20 MS. SIMMONS: Not specifically -- I'm sorry.  
21 Not specifically. The current Florida plan is in  
22 effect in Tennessee presently. Of course, the  
23 current Florida plan does not differentiate payments  
24 according to the severity of the performance measure  
25 failure.

1                   COMMISSIONER DAVIDSON: What would it take in  
2 terms of analysis or time for you to be able to  
3 comment upon example 2, sort of taking the  
4 assumptions BellSouth has made and stating whether  
5 their conclusion, even if it is at the extreme end,  
6 is accurate or inaccurate? What would it take in  
7 terms of time or process? I'm not asking you to do  
8 that here on the bench, here during agenda, but more  
9 of -- could you get through this in a week, two  
10 weeks, a day, two days?

11                   MS. SIMMONS: I would estimate approximately a  
12 week to take a look at this.

13                   CHAIRMAN BAEZ: How long would it take -- along  
14 the same lines, how long would it take staff to  
15 provide a series of examples for the Commission  
16 using actual baseline and current data to  
17 demonstrate the range of penalties that would  
18 occur? For example, if you conclude that example 1  
19 and example 2 are accurate, even though example 2  
20 may be at the extreme, how long would it take staff  
21 to sort of divide up the occurrences of --  
22 hypothetical occurrences of nonperformance, one  
23 missed appointment, 10 missed appointments,  
24 et cetera, to come up with some in-betweens so we  
25 have a better gauge as to whether we're talking



1 about reasonable penalties or penalties of \$30  
2 million?

3 MS. SIMMONS: It's difficult for me to provide  
4 an estimate, but I believe it would take several  
5 weeks to really go through this stuff thoroughly.

6 COMMISSIONER DAVIDSON: I'll tell you just  
7 where I am at on this, Commissioners. I mean, our  
8 goal is to strike the right balance between  
9 rightfully trying to deter poor performance and then  
10 an outright exorbitant punitive measure. I would  
11 actually like to see this item deferred to a  
12 potential agenda, and hopefully the parties work out  
13 a solution that would avoid, you know, going to  
14 hearing or issuing an order and having that  
15 protested. And as I sit here today, I'm just not  
16 comfortable enough approving staff, and I'm also not  
17 comfortable saying going forward that BellSouth's  
18 idea is the right one as well.

19 CHAIRMAN BAEZ: Well, Commissioner, are there  
20 -- I mean, help me understand what the impacts are  
21 of --

22 MS. SIMMONS: Right. My only comment would be,  
23 this whole process has been very difficult. It has  
24 been going on for quite a while. I think we're in a  
25 little bit of a procedural dilemma in terms of what

1 will be the most expeditious way to get this matter  
2 handled.

3 Based on BellSouth's comments today, I guess  
4 I'm not completely clear on something, and that is  
5 whether or not they think the basic concept in the  
6 staff recommendation is something that they could  
7 live with, or if in fact they are intent on paying  
8 on disparate transactions, which was something I  
9 picked up in the comments. So I'm having trouble  
10 determining how far apart we are in this process.

11 CHAIRMAN BAEZ: Well, Ms. Simmons, if you're  
12 having trouble determining how far apart you are,  
13 think about us who are perhaps --

14 MS. SIMMONS: Yes.

15 CHAIRMAN BAEZ: Perhaps haven't heard it as  
16 much as you have.

17 MS. SIMMONS: Yes. Understood.

18 CHAIRMAN BAEZ: And I guess what I'm asking --  
19 I mean, I would like to -- I've got to tell you --  
20 and again, no one has had a chance to verify the  
21 numbers, but, you know, a \$31 million -- even a \$31  
22 million hypothetical example, if it's accurate, is  
23 kind of shocking to the system. And not professing  
24 to understand all the ins and outs of the SEEMs  
25 program, although perhaps I should, you know, I

1 think what we're looking for is some reasonable  
2 results.

3 And I think -- you know, I'm not sure that  
4 Commissioner Davidson's request isn't really a  
5 reasonable one to let us know, give us some inkling  
6 as to whether this is, as Mr. Hatch said, you know,  
7 maximum effect or if there are results like this  
8 entirely possible. If results like \$31 million are  
9 entirely possible, I don't know about the rest of  
10 the Commissioners, but that's -- you know, I'm in  
11 the wrong business.

12 MS. SIMMONS: Commissioners, I did want to  
13 mention that if in fact these kinds of outcomes are  
14 possible, there has been mention of putting floors  
15 and ceilings on the payments. I am not necessarily  
16 opposed to that at all.

17 CHAIRMAN BAEZ: And let me -- for my purposes  
18 anyway, Commissioners, let me ask you about that.  
19 And I want to try and understand exactly what the  
20 suggestion is and understand how that plays into the  
21 six-month review.

22 Having floors and ceilings placed on this  
23 particular model that staff is recommending, yes,  
24 there's an issue that Mr. Bell suggested of the  
25 dollar neutrality that you all are trying to

1 maintain. But as an interim measure, in order to  
2 perhaps avoid -- with this particular plan, avoid  
3 these absurd possible results, if you will, is that  
4 enough to get you into a six-month review where you  
5 can hopefully find some kind of solution to whatever  
6 the entirety of the problems may be?

7 MS. SIMMONS: That's plausible from my  
8 standpoint. I mean, I would not have difficulty  
9 with, based on the discussion here, suggesting that  
10 the staff recommendation be augmented to include the  
11 floor and ceilings. And I actually have some  
12 specific language I could give you on that.

13 CHAIRMAN BAEZ: Nevertheless, Commissioners,  
14 Ms. Simmons, if there isn't statutory time limits or  
15 there are timing issues of which we're not aware,  
16 one Commissioner has requested deferral, and I  
17 intend to honor that if -- Commissioner Davidson,  
18 can you help me restate what kind of information it  
19 is that you need so that staff can get the proper  
20 direction?

21 COMMISSIONER DAVIDSON: There are a couple of  
22 types of information, and it's, I think, incumbent  
23 upon staff to really work with the parties to make  
24 sure when you get the information -- if BellSouth  
25 provides you with something, I mean, take that back

1 to AT&T, the other companies, and really say, "This  
2 is what we've got," or better yet, you know,  
3 BellSouth can give you that information, but really  
4 sort of get a dialogue going about what makes sense  
5 so that we're not hit with another example of  
6 severity.

7 But in terms of the information, what I was  
8 thinking of would be a series of examples using  
9 actual baseline data and actual current month data  
10 that would provide the Commission with information  
11 on what types of penalties would be imposed, say,  
12 with one violation out of X number of appointments,  
13 and, you know, an increasing number of missed  
14 appointments, so that if there's increasing  
15 nonperformance, we understand the nature of the  
16 penalty. And if there is -- in BellSouth's example,  
17 if there's equivalent or even better performance,  
18 are there any scenarios in which, given that better  
19 performance, the penalties would in fact be  
20 increased.

21 And I think in general, be very clear about,  
22 from my standpoint, what is the severity component.  
23 I mean, how is that measured again? And that's sort  
24 of built into what we were talking about in terms of  
25 the example, but what is the severity component, and

1 any other, you know, major issues that the parties  
2 have.

3 CHAIRMAN BAEZ: Have you got enough there,  
4 Ms. Simmons?

5 MS. SIMMONS: Yes. Could I ask one question,  
6 and that is going back to something I was mentioning  
7 about I'm not sure how far apart the parties are.  
8 The only thing I was going to ask, is there any  
9 possibility here of temporarily passing the item so  
10 I could get a better sense? I'm a little concerned  
11 that BellSouth may or may not be willing to work  
12 with the concept. That's my concern here.

13 CHAIRMAN BAEZ: Ms. Simmons, I'm not sure that  
14 you can't have that discussion offline, and we can  
15 still honor Commissioner Davidson's request.

16 MS. SIMMONS: Okay.

17 CHAIRMAN BAEZ: So -- I mean, I think --

18 MS. SIMMONS: Okay.

19 CHAIRMAN BAEZ: I think with a deferral, and at  
20 this point I'm thinking one agenda, you'll have at  
21 least some time to determine what Mr. Varner  
22 actually meant when he --

23 MS. SIMMONS: Okay.

24 CHAIRMAN BAEZ: -- said what he said and figure  
25 out how close you all are.

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MS. SIMMONS: All right.

CHAIRMAN BAEZ: So we'll defer the item until  
the next agenda conference. That will be Item 7.

(Conclusion of consideration of Item 7.)

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STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, do hereby certify that the foregoing was transcribed by me from an audiotape, and that the foregoing pages numbered 1 through 23 are a true and correct transcription of the aforesaid proceedings to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing matter.

DATED THIS 8th day of February, 2004.

  
MARY ALLEN NEEL, RPR  
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(850) 878-2221